

## **ADVICE NOTE: The Localism Act 2011: The General Power of Competence**

Section 1 of the Localism Act 2011 provides for a new General Power of Competence for councils in England. The General Power replaces the Power of Well-being provided under section 2 of the Local Government Act 2000.<sup>1</sup> The General Power is available to parish and town councils which meet conditions of eligibility for the exercise of the power as set out in the Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012.<sup>2</sup>

### **The General Power**

Section 1 of the Act says that a local authority has power to do anything that individuals generally may do (s 1(1)).

A 'local authority' includes principal councils in England and 'eligible parish councils' (see 'Eligibility' below), but not local authorities in Wales.

An 'individual' means an individual with full capacity, i.e. a sane adult (s 1(3)).

The power includes the power to do an act anywhere in the United Kingdom or elsewhere; and the power to do it for a commercial purpose or otherwise for a charge, or without charge; and the power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area (s 1(4)).

It is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power (s 1(5)), nor is any such other power limited by the existence of the general power (s 1(6)).

But there are boundaries to the general power (set out in section 2), and limits on charging (s 3), and on doing things for a commercial purpose (s 4).

If your council is planning to use the general power, you will need to familiarise yourself with sections 1 to 8 of the Act and any secondary legislation which may apply.

### **Eligibility**

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<sup>1</sup> Schedule 1 to the Localism Act 2011 repeals and replaces the Power of Well-being in England and came into force on 4 April 2012. However, under transitional provisions set out in SI 2012/1008, a council which was eligible to use the Power of Well-being on 4 April 2012 may continue to use the Power of Well-being until the end of the day of its next annual meeting in a year of ordinary elections (and after that day it may do so for the purpose of completing any activity which it has undertaken in the exercise of the Power of Well-being, but not completed before the day of the meeting). If a council ceases to meet the Power of Well-being eligibility criteria before the date of its next annual meeting in a year of ordinary elections, the transitional arrangements in SI 2008/3095 apply, and the council will only have the power to complete any activity which it has undertaken in the exercise of the Power of Well-being, but not yet completed. Forward-thinking councils will take steps now to ensure that they meet the eligibility criteria for the General Power of Competence as soon as they can.

The Power of Well-being provisions remain in force for community councils in Wales (see section 126 of the Local Government (Wales) Measure 2011, which amends the LGA 2000 Power of Well-being provisions).

<sup>2</sup> SI 2012/965

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To qualify as an “eligible parish council”, a parish council in England must meet conditions prescribed by the Secretary of State in the Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012. This Order says that, to be eligible to use the General Power of Competence, parish councils must meet the following conditions:

*1. The council has resolved at a meeting of the council and each subsequent relevant annual meeting that it meets the conditions in paragraph 2 below.*

*2.- (1) At the time a resolution under paragraph 1 is passed—*

*(a) the number of members of the council that have been declared to be elected, whether at ordinary elections or at a by-election, is equal to or greater than two-thirds of the total number of members of the council;<sup>3</sup>*

*(b) the clerk to the parish council holds—*

*(i) the Certificate in Local Council Administration;*

*(ii) the Certificate of Higher Education in Local Policy;*

*(iii) the Certificate of Higher Education in Local Council Administration; or*

*(iv) the first level of the foundation degree in Community Engagement and Governance awarded by the University of Gloucestershire or its successor qualifications; and*

*(c) the clerk to the parish council has completed the relevant training, unless such training was required for the purpose of obtaining a certificate of a description mentioned in paragraph (b).*

*(2) For the purposes of this paragraph “relevant training” means training—*

*(a) in the exercise of the general power;*

*(b) provided in accordance with the national training strategy for parish councils adopted by the National Association of Local Councils and Commission for Rural Communities, as revised from time to time.<sup>4</sup>*

If a parish council resolves that that it meets the prescribed conditions, it shall be an eligible parish council for the duration of the eligibility period, ie it shall be eligible to use the General Power from the time that the resolution is passed until the day of the next annual meeting of that parish council (held after the resolution is passed) that takes place in a year of ordinary elections (the ‘relevant annual meeting’).

If, at the relevant annual meeting, the parish council does not pass a (further) resolution that it meets these eligibility criteria, it ceases to be an eligible parish council, but a transitional provision specifies that the council shall continue to be an eligible parish council for the purpose of completing any activity undertaken in the exercise of the general power but not completed before of the day of that meeting.

<sup>3</sup> “Elected” councillors includes councillors who were elected unopposed. Councillors who were co-opted or appointed as councillors are not included, however, as they have not stood for election.

<sup>4</sup> Clerks who already hold CiLCA and received their training in the power of well-being rather than in the new General Power of Competence must complete the new CiLCA section 7 module and sit the assessment to meet this condition.

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The resolution that the council meets the prescribed conditions cannot be delegated to a committee or sub-committee.